

35A Am. Jur. 2d Federal Tort Claims Act II A Refs.

American Jurisprudence, Second Edition | May 2021 Update

Federal Tort Claims Act

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II. Right to Proceed Under Act

A. Who is Employee of Government

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [United States](#)  878 to 880(3)

A.L.R. Library

A.L.R. Index, Federal Tort Claims Act (FTCA)

West's A.L.R. Digest, [United States](#)  878 to 880(3)

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35A Am. Jur. 2d Federal Tort Claims Act § 8

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Federal Tort Claims Act

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II. Right to Proceed Under Act

A. Who is Employee of Government

§ 8. Law governing determination of status as government employee for purposes of Federal Tort Claims Act (FTCA)

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [United States](#)  878 to 880(3)

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[Who are "employees" of the United States within the Federal Tort Claims Act, 57 A.L.R.2d 1448](#)

[When Is Federal Agency Employee Independent Contractor, Creating Exception to United States Waiver of Immunity Under Federal Tort Claims Act \(28 U.S.C.A. s2671\), 166 A.L.R. Fed. 187](#)

Trial Strategy

[Proof of Employee Status Under Federal Tort Claims Act \(FTCA\), 137 Am. Jur. Proof of Facts 3d 109](#)

[Proving the Existence of an Employment Relationship, 22 Am. Jur. Proof of Facts 3d 353](#)

For the United States to be held liable under the Federal Tort Claims Act (FTCA), the negligent person must be an "employee" as defined by the Act.¹ Under the FTCA, "employee of the government" includes (1) officers or employees of any federal agency, members of United States military or naval forces, members of the National Guard while engaged in training or duty, and persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation; and (2) any officer or employee of a federal public defender organization, except when such officer or employee performs professional services in the course of providing representation.² The word "persons" as used in that portion of the FTCA providing for tort immunity of "employees of the

government,” including “persons acting on behalf of a federal agency,” does not include corporations, notwithstanding the Dictionary Act’s provision that the word “person” when used in an Act of Congress includes “corporations” “unless the context indicates otherwise”; several contextual features of the FTCA indicate that “persons” was intended to apply only to natural persons as did Congress’ purpose of protecting the federal workforce from personal liability.³

Observation:

Whether one is an employee of the United States, for purposes of the FTCA, is determined by federal law.⁴

The statutory definition of “employee of the government” does not require that a person possess formal employee status, but includes any person acting on behalf of a federal agency and in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation.⁵ Thus, the definition includes the regular personnel of a Veterans’ Administration hospital,⁶ a Federal Aviation Administration authorized inspector,⁷ a Job Corps enrollee,⁸ Peace Corps volunteers,⁹ federal judges, federal public defenders and their appointees, as well as employees of the federal judicial,¹⁰ and legislative branches,¹¹ and United States Congressional Representatives.¹² On the other hand, the statutory definition of “employee of the government” does not include employees of the District of Columbia,¹³ an airport maintenance contractor,¹⁴ lessees,¹⁵ independent contractors,¹⁶ a university employee providing medical services to students enrolled in a federally funded Job Corps Center,¹⁷ an employee of a university research foundation which had a contract with NASA under which the employee gave space science lectures and presentations at various schools in several states,¹⁸ and a prospective juror in federal court.¹⁹

Practice Tip:

The burden rests with the plaintiff bringing an FTCA action to prove that under federal law, the negligent person was an employee of the United States.²⁰

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Footnotes

- ¹ [Mocklin v. Orleans Levee Dist.](#), 690 F. Supp. 527 (E.D. La. 1988), [aff’d](#), 877 F.2d 427 (5th Cir. 1989).
- ² [28 U.S.C.A. § 2671](#).
As to federal agencies, see [§ 11](#).
- ³ [Adams v. U.S.](#), 420 F.3d 1049 (9th Cir. 2005).
- ⁴ [Means v. U.S.](#), 176 F.3d 1376 (11th Cir. 1999).
- ⁵ [Guccione v. U.S.](#), 670 F. Supp. 527 (S.D. N.Y. 1987), [judgment aff’d](#), 847 F.2d 1031 (2d Cir. 1988).
- ⁶ [Rufino v. US](#), 126 F. Supp. 132 (S.D. N.Y. 1954).

- 7 In re Air Crash Disaster near Silver Plume, Colorado, on October 2, 1970, 445 F. Supp. 384 (D. Kan. 1977).
- 8 Nichols v. U.S., 796 F.2d 361 (10th Cir. 1986).
- 9 22 U.S.C.A. § 2504(i).
- 10 Sullivan v. U.S., 21 F.3d 198 (7th Cir. 1994).
- 11 28 U.S.C.A. § 2671.
- 12 Operation Rescue Nat. v. U.S., 147 F.3d 68 (1st Cir. 1998).
- 13 Bradshaw v. U.S., 443 F.2d 759 (D.C. Cir. 1971).
- 14 Berkman v. U.S., 957 F.2d 108 (4th Cir. 1992).
- 15 Gober v. U.S., 778 F.2d 1552 (11th Cir. 1986).
- 16 Phillips v. Federal Bureau of Prisons, 271 F. Supp. 2d 97 (D.D.C. 2003).
- 17 Ashley v. Patel, 871 F. Supp. 423 (M.D. Ala. 1994).
- 18 White v. U.S., 472 F. Supp. 259 (W.D. Pa. 1979).
- 19 Sellers v. U.S., 672 F. Supp. 446 (D. Idaho 1987).
- 20 Duncan v. U.S., 562 F. Supp. 96 (E.D. La. 1983).

35A Am. Jur. 2d Federal Tort Claims Act § 9

American Jurisprudence, Second Edition | May 2021 Update

Federal Tort Claims Act

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II. Right to Proceed Under Act

A. Who is Employee of Government

§ 9. Factors affecting employee status for purposes of FTCA; distinction from contractor status; particular persons as employees

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [United States](#)  878 to 880(3)

Since a formal employee status is not required before a person may be considered a federal employee under the Federal Tort Claims Act (FTCA),¹ the degree of day-to-day control which the government exercises over a person in the performance of the person's duties is an important factor in determining whether such person is an employee of the government, within the meaning of the FTCA.² Although none are dispositive of the question, factors that courts may consider in distinguishing between a contractor and an employee for Federal Tort Claims Act (FTCA) purposes include: (1) the extent of control which, by the agreement, the master may exercise over the details of the work; (2) whether the one employed is engaged in a distinct occupation or business; (3) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision; (4) the skill required in the particular occupation; (5) whether the employer or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work; (6) the length of time for which the person is employed; (7) the method of payment, whether by the time or by the job; (8) whether the work is a part of the regular business of the employer; (9) whether the parties believe they are creating the relation of master and servant; and (10) whether the principal is or is not in business.³

Workers have been deemed to be federal employees for purposes of the FTCA, in the following cases where the workers were—

- officers who at the time of arresting an Indian on the reservation were deputized special officers of the Department of the Interior, Bureau of Indian Affairs, and who did not have authority to arrest the Indian on the reservation in their capacity as officers of a city located on the reservation.⁴
- a physician whose professional corporation had a contract to provide such physician's services to a federally supported health center, notwithstanding the lack of a direct employment contract between the center and the physician, as the corporation acted as the physician's alter ego and the contract between the corporation and the center was essentially an employment contract and was signed by the physician.⁵
- a sales agent appointed by a court during yacht foreclosure proceedings, given that the agent was appointed by the United States district court to administer the sale of the yacht and the court retained the authority to approve the sale and distribution of the proceeds.⁶

However, workers have been deemed not federal employees under the FTCA where the workers were—

- a landscaping business employee where the landscaping business contract with the government stated “the contractor, rather than the government, determine[d] its own optimal work schedules, frequencies, resource allocations, and performance methods,” and that it was government policy “that government direction or supervision of the contractor’s employees, either directly or indirectly, [would] not be exercised.”⁷
- an airport maintenance contractor, even though the government contracted for the right periodically to inspect the contractor’s performance and insure that the services provided were in compliance with the terms of the contract, since this did not amount to the government having day-to-day physical control of the contractor’s operations.⁸
- a physician who was providing obstetrics/gynecological services at an army hospital but was an independent contractor at the time of a patient’s tubal ligation.⁹
- an individual who operated and inspected the press after an accident in which an employee sustained grievous personal injuries, but was not acting on behalf of the Occupational Safety and Health Administration (OSHA) in an official capacity in the service of the United States, although an OSHA inspector conducting a simultaneous inspection videotaped the individual’s operation and inspection of the press, the individual was hired by the press manufacturer to determine what went wrong, the individual did not have a contract with the government, and the OSHA inspector did not tell the individual what to do.¹⁰
- a doctor who was serving as an officer of the day for a veterans hospital’s urgent care division pursuant to a contract between the hospital and a managed care company, where the contract indicated that the personnel provided thereunder were the company’s employees, that the health care providers working at the hospital pursuant to the contract were independent contractors, and that the government had no control over the doctor’s professional medical judgment, diagnosis, or specific medical treatments, and there was no evidence that the government exercised actual control over the doctor in any way inconsistent with the contract’s language.¹¹
- a certified registered nurse anesthetist (CRNA) at a federally funded Indian hospital who was an independent contractor, not a federal employee, and thus the medical malpractice claim against the CRNA was not within the scope of the FTCA, despite the CRNA’s contention that the CRNA was under the direction of the operating surgeon at the time of the alleged negligence, the CRNA had to abide by the hospital’s bylaws, policy, and procedures, used the hospital’s equipment, and wore the hospital’s attire, since the contract signed by the CRNA expressly stated that the CRNA accepted the assignment “as an independent contractor,” the CRNA, not the hospital, was responsible for sending and paying for the relief contractor, the hospital did not control or supervise the manner in which the CRNA rendered medical treatment or anesthesia to patients, the CRNA had to personally pay for personal malpractice insurance and taxes, and state law did not require the CRNA to work under a surgeon’s supervision.¹²

Observation:

The existence of federal funding, standing alone, does not establish an individual’s status as a federal employee and hence the government’s liability under the FTCA.¹³ Similarly, an independent contractor engaged in an ultra-hazardous activity is not entitled to governmental immunity under the Federal Tort Claims Act (FTCA) even if performing under a federal government contract.¹⁴

Footnotes

¹ § 8.

² *U. S. v. Orleans*, 425 U.S. 807, 96 S. Ct. 1971, 48 L. Ed. 2d 390 (1976).

³ *U.S. Tobacco Cooperative Inc. v. Big South Wholesale of Virginia, LLC*, 899 F.3d 236 (4th Cir. 2018).

⁴ *Provancial v. U.S.*, 454 F.2d 72 (8th Cir. 1972).

§ 9. Factors affecting employee status for purposes of..., 35A Am. Jur. 2d...

- 5 Alexander v. Mount Sinai Hosp. Medical Center of Chicago, 165 F. Supp. 2d 768 (N.D. Ill. 2001).
- 6 Gilman Yacht Sales, Inc. v. First Nat. Bank of Chicago, 600 So. 2d 1131 (Fla. 4th DCA 1992).
- 7 Carroll v. U.S., 661 F.3d 87 (1st Cir. 2011).
- 8 Berkman v. U.S., 957 F.2d 108 (4th Cir. 1992).
- 9 Linkous v. U.S., 142 F.3d 271, 166 A.L.R. Fed. 733 (5th Cir. 1998).
- 10 Haddix v. Yetter Mfg. Co., 209 F. Supp. 2d 915 (N.D. Ill. 2002).
- 11 In re Estate of Kout v. U.S., 241 F. Supp. 2d 1183 (D. Kan. 2002).
- 12 Garcia v. Reed, 227 F. Supp. 2d 1183 (D.N.M. 2002).
- 13 Haugen v. U.S., 492 F. Supp. 398 (E.D. N.Y. 1980), *aff'd*, 646 F.2d 560 (2d Cir. 1980).
- 14 Cabalce v. VSE Corp., 922 F. Supp. 2d 1113 (D. Haw. 2013), *aff'd*, 797 F.3d 720 (9th Cir. 2015).

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35A Am. Jur. 2d Federal Tort Claims Act § 10

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Federal Tort Claims Act

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II. Right to Proceed Under Act

A. Who is Employee of Government

§ 10. Members of National Guard as federal employees for purposes of FTCA

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [United States](#)  878 to 880(3)

The Federal Tort Claims Act (FTCA) applicable to members of the armed forces applies to members of the National Guard while they are engaged in training or duty.¹ Thus, a National Guard member who was on active duty for training at the time the member was struck by a National Guard vehicle driven by another Guard member is deemed an employee of the federal government under the FTCA.²

Observation:

The *Feres* doctrine of intramilitary immunity may apply to a lawsuit based on alleged actions taken while a guard technician is being paid as a civilian employee.³

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Footnotes

¹ 28 U.S.C.A. § 2671.

² [Willis v. Skaff](#), 186 W. Va. 689, 414 S.E.2d 450 (1992).

³ [Overton v. New York State Div. of Military and Naval Affairs](#), 373 F.3d 83 (2d Cir. 2004).
As to the *Feres* doctrine, see § 3.

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35A Am. Jur. 2d Federal Tort Claims Act II B Refs.

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Federal Tort Claims Act

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II. Right to Proceed Under Act

B. What is Federal Agency

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [United States](#)  878 to 880(3)

A.L.R. Library

A.L.R. Index, Federal Tort Claims Act (FTCA)

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35A Am. Jur. 2d Federal Tort Claims Act § 11

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Federal Tort Claims Act

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II. Right to Proceed Under Act

B. What is Federal Agency

§ 11. Federal agency for purposes of Federal Tort Claims Act (FTCA)

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [United States](#)  878 to 880(3)

As used in the Federal Tort Claims Act (FTCA), the term “federal agency” includes the executive departments, the judicial and legislative branches, the military departments, independent establishments of the United States, and corporations primarily acting as instrumentalities or agencies of the United States, but does not include any “contractor” with the United States.¹

The critical element in distinguishing an “agency” of the federal government from a “contractor” for purposes of the FTCA is the power of the federal government to control the detailed physical performance of the contractor.² A party or an entity becomes an agency of the United States within the meaning of the FTCA, only if its day-to-day operations are supervised by the federal government.³

This analysis has been used in a variety of cases, and the following have been found not to be federal agencies under the FTCA: the Federal Home Loan Mortgage Corporation,⁴ the Federal Reserve Bank,⁵ federal home loan banks,⁶ the Red Cross,⁷ the medical branch of a state university while acting as a contract healthcare provider for the federal prison system,⁸ the Lorton Reformatory of the District of Columbia,⁹ Amtrak,¹⁰ the United States Olympic Committee,¹¹ and a transit authority allegedly supplied by the Federal Department of Transportation (DOT) with federal funding.¹² On the other hand, the following have all been found to be federal agencies for the purposes of the FTCA: the Federal Deposit Insurance Corporation,¹³ a health clinic, which received a federal grant for providing primary health services to a medically underserved population,¹⁴ the John F. Kennedy Center for the Performing Arts,¹⁵ the St. Lawrence Seaway Development Corporation,¹⁶ the Federal Aviation Administration,¹⁷ the Resolution Trust Corporation,¹⁸ the Postal Inspection Service,¹⁹ a redevelopment agency,²⁰ and the Smithsonian Institution.²¹

Observation:

The United States is not liable for claims against the District of Columbia.²² The municipal immunity of the District of Columbia is

a matter of common-law theory of municipal governmental immunity as developed in the case law of the jurisdiction, and is not derived from the sovereignty of the United States or limited to the same extent as that of the federal government under the FTCA.²³

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Footnotes

- 1 28 U.S.C.A. § 2671.
- 2 U. S. v. Orleans, 425 U.S. 807, 96 S. Ct. 1971, 48 L. Ed. 2d 390 (1976).
- 3 Rayzor v. U.S., 937 F. Supp. 115 (D.P.R. 1996), *aff'd*, 121 F.3d 695 (1st Cir. 1997).
- 4 Mendrala v. Crown Mortg. Co., 955 F.2d 1132 (7th Cir. 1992).
- 5 Lewis v. U.S., 680 F.2d 1239 (9th Cir. 1982).
- 6 Rheams v. Bankston, Wright & Greenhill, 756 F. Supp. 1004 (W.D. Tex. 1991).
- 7 Rayzor v. U.S., 937 F. Supp. 115 (D.P.R. 1996), *aff'd*, 121 F.3d 695 (1st Cir. 1997).
- 8 O'Rourke v. U.S., 298 F. Supp. 2d 531, 185 Ed. Law Rep. 146 (E.D. Tex. 2004).
- 9 Cannon v. U.S., 645 F.2d 1128 (D.C. Cir. 1981).
- 10 Sentner v. Amtrak, 540 F. Supp. 557 (D.N.J. 1982).
- 11 Stop the Olympic Prison v. U.S. Olympic Committee, 489 F. Supp. 1112 (S.D. N.Y. 1980).
- 12 Ferguson v. New York City Transit Authority, 206 F. Supp. 2d 374 (E.D. N.Y. 2002).
- 13 Federal Deposit Ins. Corp. v. Hartford Ins. Co. of Illinois, 877 F.2d 590, 111 A.L.R. Fed. 767 (7th Cir. 1989).
- 14 Brown v. Health Service, Inc., 971 F. Supp. 518 (M.D. Ala. 1997).
- 15 Polcari v. John F. Kennedy Center for Performing Arts, 712 F. Supp. 230 (D.D.C. 1989).
- 16 Handley v. Tecon Corp, 172 F. Supp. 565 (N.D. N.Y. 1959).
- 17 Braniff Airways, Inc. v. U.S., 203 F. Supp. 602 (S.D. Fla. 1961), *judgment aff'd*, 315 F.2d 631 (5th Cir. 1963).
- 18 Park Club, Inc. v. Resolution Trust Co., 742 F. Supp. 395 (S.D. Tex. 1990), *judgment aff'd in part, rev'd in part on other grounds*, 967 F.2d 1053, 23 Fed. R. Serv. 3d 490 (5th Cir. 1992).
- 19 Goodin v. U.S. Postal Inspection Service, 393 F. Supp. 2d 869 (D. Minn. 2005), *aff'd*, 444 F.3d 998, 64 Fed. R. Serv. 3d 507 (8th Cir. 2006).
- 20 Goddard v. District of Columbia Redevelopment Land Agency, 287 F.2d 343 (D.C. Cir. 1961).
- 21 Genson v. Ripley, 544 F. Supp. 251 (D. Ariz. 1981), *judgment aff'd*, 681 F.2d 1240 (9th Cir. 1982).
- 22 Bradshaw v. U.S., 443 F.2d 759 (D.C. Cir. 1971).
- 23 Wade v. District of Columbia, 310 A.2d 857 (D.C. 1973).

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35A Am. Jur. 2d Federal Tort Claims Act § 12

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Federal Tort Claims Act

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II. Right to Proceed Under Act

B. What is Federal Agency

§ 12. Nonappropriated fund activities in military service as instrumentality of the United States for purposes of FTCA

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [United States](#)  878 to 880(3)

The term “federal agency” is sufficient to include a nonappropriated fund instrumentality.¹ In determining whether a nonappropriated fund activity in military services is an instrumentality of the United States for purposes of the Federal Tort Claims Act (FTCA), each activity must be judged in the light of the particular circumstances surrounding it.² Thus, for an Army nonappropriated fund activity to be a “federal agency” it must be an integral part of the Army, charged with an essential function in the operation of the Army, and the degree of control and supervision by the Army must be more than casual or perfunctory.³ Among nonappropriated fund activities that have been held to be a federal agency under the FTCA are: an Air Force base exchange,⁴ a central base fund,⁵ an officers’ mess hall,⁶ an officers’ club,⁷ a servicemembers bowling alley,⁸ a flying club,⁹ and a swimming pool for civilians operated on an Air Force base.¹⁰ On the other hand, a hunt club made up of members of the United States Army that was organized, and that used certain Army base areas and structures, with the commanding general’s consent, has been held not to be a federal agency within the meaning of the Act, on the basis that the club was not an integral part of the Army nor an instrumentality of the government, and that the Army did not have such a degree of control and supervision over the club as would qualify the club as such an agency.¹¹

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Footnotes

¹ [Holcombe v. U.S.](#), 176 F. Supp. 297 (E.D. Va. 1959), judgment aff’d, 277 F.2d 143 (4th Cir. 1960).

² [Scott v. U.S.](#), 226 F. Supp. 864 (M.D. Ga. 1963), judgment aff’d, 337 F.2d 471 (5th Cir. 1964).

³ [Scott v. U.S.](#), 226 F. Supp. 864 (M.D. Ga. 1963), judgment aff’d, 337 F.2d 471 (5th Cir. 1964).

⁴ [Daniels v. Chanute Air Force Base Exchange](#), 127 F. Supp. 920 (E.D. Ill. 1955).

- ⁵ Rizzuto v. U.S., 298 F.2d 748 (10th Cir. 1961).
- ⁶ U.S. v. Holcombe, 277 F.2d 143 (4th Cir. 1960).
- ⁷ Fournier v. U.S., 220 F. Supp. 752 (S.D. Miss. 1963).
- ⁸ Rizzuto v. U.S., 298 F.2d 748 (10th Cir. 1961).
- ⁹ U.S. v. Hainline, 315 F.2d 153 (10th Cir. 1963).
- ¹⁰ Brewer v. U.S., 108 F. Supp. 889 (M.D. Ga. 1952).
- ¹¹ Scott v. U.S., 226 F. Supp. 864 (M.D. Ga. 1963), judgment *aff'd*, 337 F.2d 471 (5th Cir. 1964).

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35A Am. Jur. 2d Federal Tort Claims Act II C Refs.

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Federal Tort Claims Act

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II. Right to Proceed Under Act

C. Effect of Other Provisions for Relief on Right to Proceed Under the Act

[Topic Summary](#) | [Correlation Table](#)

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West's Key Number Digest, [United States](#)  872, 964(1), 964(2)

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Federal Tort Claims Act

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II. Right to Proceed Under Act

C. Effect of Other Provisions for Relief on Right to Proceed Under the Act

§ 13. Effect of other statutes for relief on right to proceed under Federal Tort Claims Act (FTCA), generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [United States](#)  872, 964(1), 964(2)

Congress has the power to modify the Federal Tort Claims Act (FTCA) by means of other statutes.¹ Thus, contemporaneous with the passage of the FTCA,² Congress enacted a provision limiting or preventing the introduction of private acts in Congress seeking compensation for injuries by government employees,³ but this provision only applies to the denial of private acts where such causes of action come within the FTCA.⁴ Other statutes provide an exclusive liability provision that effectively precludes a federal employee from recovering under the FTCA for work-related injuries or death, such as, the Federal Employees Compensation Act⁵ and the Longshore and Harbor Workers' Compensation Act.⁶ Still other federal statutes, such as the Flood Control Act⁷ specifically immunize the United States from liability for claims of property damage or personal injury resulting from tortious misconduct and thus preclude remedies otherwise afforded under the FTCA. At the same time though, the presence of a state compensation system does not necessarily preclude an action under the FTCA.⁸ In fact, a state's workers' compensation law may expressly provide that an injured worker may take compensation under that law and also recover in an action against a third person responsible for the injury, on the condition that in the event of a recovery in that action, the employer is to be subrogated to, or will have a lien against, the recovery to the extent of the employer's payments made in compensation of the injury.⁹

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Footnotes

¹ [Galimi v. Jetco, Inc.](#), 514 F.2d 949 (2d Cir. 1975).

² [28 U.S.C.A. §§ 1346\(b\), 2671 to 2680.](#)

³ [2 U.S.C.A. § 190g.](#)

⁴ [Small v. U.S.](#), 219 F. Supp. 659 (D. Del. 1963), order aff'd, 333 F.2d 702 (3d Cir. 1964).

⁵ § 14.

⁶ §§ 15, 16.

⁷ § 29.

⁸ U.S. v. Muniz, 374 U.S. 150, 83 S. Ct. 1850, 10 L. Ed. 2d 805 (1963).

⁹ Pierce v. U.S., 142 F. Supp. 721 (E.D. Tenn. 1955), judgment aff'd, 235 F.2d 466 (6th Cir. 1956).

End of Document

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35A Am. Jur. 2d Federal Tort Claims Act § 14

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II. Right to Proceed Under Act

C. Effect of Other Provisions for Relief on Right to Proceed Under the Act

§ 14. Federal Employees' Compensation Act preclusion of recovery under FTCA

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [United States](#)  872, 964(1), 964(2)

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[Federal compensation acts, in nature of workers' compensation acts, as affecting recovery against United States under Federal Tort Claims Act \(28 U.S.C.A. sec. 1346\(b\), 2671 et seq.\), 135 A.L.R. Fed. 403](#)

Under the Federal Employees Compensation Act (FECA),¹ federal employees are statutorily precluded from bringing suits for money damages for injuries sustained during the course of their employment.² The FECA, which provides benefits primarily in the nature of medical expense reimbursement and disability benefits to federal employees injured or killed in the course of performing their duties, is intended to be the exclusive remedy for injured federal employees.³ The exclusive liability provision of FECA was designed to protect the government from suits under statutes, such as the Federal Tort Claims Act (FTCA), which has been enacted to waive the government's sovereign immunity,⁴ and Congress thereby guaranteed employees' right to receive immediate, fixed benefits, regardless of fault and without the need for litigation, in return for which they lost the right to sue the government.⁵

The FECA also applies to claims for injury, death or detention of employees of contractors with the United States who are working outside of the United States.⁶ Decisions by the Secretary of Labor allowing or denying the payment of awards under the FECA are final and conclusive, and are not subject to judicial review; accordingly, where the Secretary has determined that the FECA is applicable, actions under the FTCA are precluded, with the exception that district courts have jurisdiction over constitutional challenges to the Secretary's actions in administering the FECA.⁷ Thus, the district court lacked jurisdiction over a suit by a former CIA agent under the FTCA to recover additional compensation for posttraumatic stress disorder (PTSD) covered by the FECA; the decision by the Secretary of Labor that the FECA covered the condition was final and conclusive for all purposes, and even though the former agent received no compensation for the agent's PTSD, the agent received reimbursement for the medical expenses relating to such PTSD.⁸

It has also been generally established that malpractice by government doctors in treating work-related injuries is covered by the FECA and, therefore, lawsuits against the government under the FTCA for such malpractice are barred.⁹ However, the courts are divided with respect to whether the FECA covers claims for work-related emotional distress of federal employees, precluding FTCA suits seeking to recover damages for such injuries, with some courts following the view of the Department of Labor that such claims are compensable under the FECA,¹⁰ and other courts holding that such claims are not covered under the FECA and, accordingly, that suits under the FTCA are not barred.¹¹ Although the dual capacity doctrine, under which an employee can maintain a tort action against an employer if the employer acts with respect to the employee in a capacity other than as employer, has been applied to at least one claim by a federal employee,¹² nevertheless, most courts have either rejected the doctrine¹³ or found it not applicable.¹⁴

Observation:

An injured federal employee cannot maintain an action under the FTCA if the Secretary of Labor determines that the employee falls within the coverage of the FECA regardless of whether that determination is made prior or subsequent to institution of the FTCA action.¹⁵ Also, a federal employee's acceptance of benefits under the FECA for injuries arising from another employee's sexual harassment toward the employee will bar the employee's and the employee's spousal FTCA claims,¹⁶ since the claim under the FTCA is barred by the exclusive remedy provision of the FECA.¹⁷

Practice Tip:

An injured federal employee may not sue under the FTCA if there is a substantial question as to whether the injuries are covered under the FECA. Before an action may be instituted under the FTCA, the federal employee must first seek and be denied relief by the Secretary of Labor under the FECA; if there is a substantial question as to the FECA coverage, a district court will generally stay the FTCA action pending a determination by the Secretary of Labor.¹⁸ Also, where a substantial question regarding the FECA coverage exists in an action brought under the FTCA, requiring the Secretary of Labor to make a decision as to FECA coverage, an abatement, rather than dismissal, of the FTCA action is the appropriate course of action, in order to avoid the running of the FTCA's limitations period.¹⁹

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Footnotes

- ¹ 5 U.S.C.A. §§ 8101 to 8152.
- ² *Davis v. United States*, 973 F. Supp. 2d 23 (D.D.C. 2014).
- ³ 5 U.S.C.A. § 8116(c).
- ⁴ *Lockheed Aircraft Corp. v. U.S.*, 460 U.S. 190, 103 S. Ct. 1033, 74 L. Ed. 2d 911 (1983); *Aviles-Wynkoop v. Neal*, 978 F. Supp. 2d 15 (D.D.C. 2013).
- ⁵ *Lockheed Aircraft Corp. v. U.S.*, 460 U.S. 190, 103 S. Ct. 1033, 74 L. Ed. 2d 911 (1983).

- 6 42 U.S.C.A. § 1701.
- 7 Doe v. U.S., 914 F. Supp. 945 (W.D. N.Y. 1996).
- 8 Spinelli v. Goss, 446 F.3d 159 (D.C. Cir. 2006).
- 9 Votteler v. U.S., 904 F.2d 128 (2d Cir. 1990); McCall v. U.S., 901 F.2d 548 (6th Cir. 1990).
- 10 Swafford v. U.S., 998 F.2d 837, 135 A.L.R. Fed. 783 (10th Cir. 1993).
- 11 Sheehan v. U.S., 896 F.2d 1168, 107 A.L.R. Fed. 297 (9th Cir. 1990), opinion amended on other grounds, 917 F.2d 424 (9th Cir. 1990).
- 12 Wright v. U.S., 717 F.2d 254 (6th Cir. 1983).
- 13 Votteler v. U.S., 904 F.2d 128 (2d Cir. 1990); Gallo v. U.S. Dept. of State Foreign Service Grievance Bd., 776 F. Supp. 1478 (D. Colo. 1991).
- 14 Schmid v. U.S., 826 F.2d 227 (3d Cir. 1987).
- 15 Tippetts v. U.S., 308 F.3d 1091 (10th Cir. 2002).
- 16 Swafford v. U.S., 998 F.2d 837, 135 A.L.R. Fed. 783 (10th Cir. 1993).
- 17 Scalia v. U.S., 475 F. Supp. 1040 (S.D. N.Y. 1979).
- 18 Bruni v. U.S., 964 F.2d 76 (1st Cir. 1992); Tarver v. U.S., 25 F.3d 900 (10th Cir. 1994).
- 19 Bonilla-Olmedo v. U.S., 677 F. Supp. 2d 511 (D.P.R. 2009).

35A Am. Jur. 2d Federal Tort Claims Act § 15

American Jurisprudence, Second Edition | May 2021 Update

Federal Tort Claims Act

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II. Right to Proceed Under Act

C. Effect of Other Provisions for Relief on Right to Proceed Under the Act

§ 15. Longshore and Harbor Workers' Compensation Act preclusion of recovery under FTCA

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [United States](#)  872, 964(1), 964(2)

A.L.R. Library

[Federal compensation acts, in nature of workers' compensation acts, as affecting recovery against United States under Federal Tort Claims Act \(28 U.S.C.A. sec. 1346\(b\), 2671 et seq.\), 135 A.L.R. Fed. 403](#)

The Longshore and Harbor Workers' Compensation Act (LHWCA), providing for the payment of compensation to employees for disability or death from injury occurring on the navigable waters of the United States,¹ also provides that an employer's liability under that Act is to be exclusive and in place of all other liability of the employer to the employee, the employee's legal representative, husband or wife, parents, dependents, next of kin and anyone otherwise entitled to recover damages from the employer at law or in admiralty, except that if an employer fails to secure payments of compensation as required by the Act, an injured employee, or the employee's legal representative in the case of death, may elect to claim compensation under the Act or to maintain an action at law or in admiralty for damages.² Where their claims present a substantial question of coverage under the LHWCA, the plaintiffs may not sue under the FTCA until they have applied for and have been denied LHWCA benefits.³ Moreover, the LHWCA is the framework for compensation for disability or death to persons employed at military, air, and naval bases outside of the United States.⁴

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Footnotes

¹ [Am. Jur. 2d, Federal Employers' Liability and Compensation Acts § 99.](#)

² [33 U.S.C.A. § 905\(a\).](#)

³ [Wreath v. U.S.](#), 897 F. Supp. 517 (D. Kan. 1995).

⁴ [42 U.S.C.A. §§ 1651 to 1655](#).

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35A Am. Jur. 2d Federal Tort Claims Act § 16

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II. Right to Proceed Under Act

C. Effect of Other Provisions for Relief on Right to Proceed Under the Act

§ 16. Longshore and Harbor Workers' Compensation Act preclusion of recovery under FTCA—Nonappropriated fund activities

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [United States](#)  872, 964(1), 964(2)

With certain limitations, the provisions of the Longshore and Harbor Workers' Compensation Act (LHWCA)¹ govern claims for the injury or death of employees whose salaries are paid from nonappropriated funds of the Army and Air Force Exchange Service, Navy Ships Stores Program, Navy exchanges, Marine Corps exchanges, Coast Guard exchanges, and other instrumentalities of the United States under the jurisdiction of the Armed Forces conducted for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Armed Forces.² The liability of the United States or of the nonappropriated fund instrumentality under the applicable provisions of the LHWCA is exclusive and instead of all other liability of the United States or the instrumentality to the employee, the employee's legal representative, spouse, dependents, next of kin, and any other person otherwise entitled to recover damages for the injury or death from the United States or the instrumentality in a direct judicial proceeding, in a civil action, in admiralty, by an administrative or judicial proceeding under a workmen's compensation statute or under a federal tort liability statute.³ Accordingly, the courts have held that the employees of these instrumentalities cannot maintain actions under the Federal Tort Claims Act (FTCA) against the government for work-related injuries.⁴

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Footnotes

¹ 33 U.S.C.A. §§ 901 to 950.

² 5 U.S.C.A. § 2105(c), 5 U.S.C.A. § 8171.

³ 5 U.S.C.A. § 8173.

⁴ *Wilder v. U.S.*, 873 F.2d 285 (11th Cir. 1989).

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35A Am. Jur. 2d Federal Tort Claims Act § 17

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II. Right to Proceed Under Act

C. Effect of Other Provisions for Relief on Right to Proceed Under the Act

§ 17. Military Claims Act preclusion of recovery under FTCA

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [United States](#)  872, 964(1), 964(2)

A.L.R. Library

[Federal compensation acts, in nature of workers' compensation acts, as affecting recovery against United States under Federal Tort Claims Act \(28 U.S.C.A. sec. 1346\(b\), 2671 et seq.\), 135 A.L.R. Fed. 403](#)

The Military Claims Act provides for the administrative settlement of certain claims against the government,¹ including claims made by a civilian employee of a military department, or the Coast Guard, or a member of the Army, Navy, Air Force, or Marine Corps for damage to, or loss of, personal property incident to the claimant's service.² The Act also provides for the payment of claims, under a specified amount, against the United States that are not cognizable under any other provision of law for damage to, or the loss of, property, or personal injury or death caused by a civilian official or employee of a military department or the Coast Guard, or a member of the Armed Forces, incident to the use of a vehicle of the United States at any place, or any other property of the United States on a government installation. Negligence or a wrongful act of the claimant, the claimant's agent or the claimant's employee, that wholly or partly caused the damage, loss, injury, or death for which recovery is sought precludes recovery under the statute. No claim or any part thereof the amount of which is legally recoverable by the claimant under an indemnifying law or indemnity contract, and no subrogated claim, may be paid under the statute.³ However, a provision of the Military Claims Act, relating to claims by persons other than civilian employees of a military department or a member of the Armed Forces, expressly declares that a claim may be allowed under a specified subsection thereof only if the claim is not covered by the provision of the Federal Tort Claims Act (FTCA) that authorizes the administrative adjustment of claims.⁴

A plaintiff is free to pursue remedies under both the FTCA and the Military Claims Act simultaneously.⁵ Alternatively, a claim may be filed under the Military Claims Act, and if a satisfactory settlement is not reached, the claimant may then proceed under the FTCA.⁶ However, the acceptance of a settlement under the Military Claims Act with its full satisfaction

clause would bar any action under the FTCA.⁷

CUMULATIVE SUPPLEMENT

Statutes:

[10 U.S.C.A. § 2733](#), as amended effective January 1, 2021, refers, additionally, to the Space Force.

[END OF SUPPLEMENT]

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Footnotes

¹ [10 U.S.C.A. §§ 2731 to 2739](#).

² [10 U.S.C.A. § 2733](#).

³ [10 U.S.C.A. § 2737](#).

⁴ [10 U.S.C.A. § 2733\(b\)\(2\)](#) (referring to [28 U.S.C.A. § 2672](#)).

⁵ [Hass v. U.S. Air Force](#), 848 F. Supp. 926 (D. Kan. 1994).

⁶ [Lundeen v. Department of Labor and Industries](#), 78 Wash. 2d 66, 469 P.2d 886 (1970).

⁷ [Lundeen v. Department of Labor and Industries](#), 78 Wash. 2d 66, 469 P.2d 886 (1970).

End of Document

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35A Am. Jur. 2d Federal Tort Claims Act § 18

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II. Right to Proceed Under Act

C. Effect of Other Provisions for Relief on Right to Proceed Under the Act

§ 18. Tucker Act preclusion of recovery under FTCA

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [United States](#)  872, 964(1), 964(2)

Forms

[Am. Jur. Pleading and Practice Forms, Federal Tort Claims Act § 92](#) (Answer—Defense—Noncoverage by Federal Tort Claims Act of claim based on contract)

The so-called Tucker Act is concerned with, among other things, an action against the United States based on express or implied contract or for damages in cases not sounding in tort¹ and limited to a certain size.² Indeed, a district court is powerless to entertain a claim where neither the statute nor a precedent allowed it to hear a Tucker Act claim in excess of \$10,000 and where the government has not specifically consented to such a claim.³ However, district courts may adjudicate suits against the United States for money damages under the Little Tucker Act and the Federal Tort Claims Act.⁴

The Little Tucker Act is not a freestanding source of jurisdiction for any and all claims alleged against the United States, but rather is simply a jurisdictional provision that operates to waive sovereign immunity for claims premised on other sources of law.⁵

Observation:

The Little Tucker Act did not waive the sovereign immunity of the United States with respect to damages actions for violations of the Fair Credit Reporting Act (FCRA); the FCRA contained a detailed remedial scheme enabling claimants to pursue in court the monetary relief contemplated by the statute, and that scheme established the exclusive framework for determining the scope of liability under the statute.⁶

Thus, a contractor cannot maintain an action under the Federal Tort Claims Act (FTCA) to recover damages arising out of a governmental agency's alleged breach of duties under a contract; such an action must be instituted under the Tucker Act.⁷ However, the Tucker Act's coverage extends only to actual contracts, either express or implied in fact, and does not extend to quasi-contracts, or contracts implied in law.⁸

Congress has not consented in the Tucker Act to suits in the district court for injunctive or constructive trust relief.⁹ Defendants who have a valid claim in tort under the FTCA and a valid claim in an implied contract under the Tucker Act, cannot claim under both Acts.¹⁰

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Footnotes

- ¹ 28 U.S.C.A. §§ 1346(a)(2), 1491.
- ² 28 U.S.C.A. § 1346(a)(2) (\$10,000).
- ³ *Powell v. Castaneda*, 390 F. Supp. 2d 1 (D.D.C. 2005), on reconsideration in part, 247 F.R.D. 179 (D.D.C. 2007).
- ⁴ *U.S. v. Tohono O'Odham Nation*, 563 U.S. 307, 131 S. Ct. 1723, 179 L. Ed. 2d 723 (2011).
- ⁵ *Khanom v. Kerry*, 37 F. Supp. 3d 567 (E.D. N.Y. 2014).
- ⁶ *U.S. v. Bormes*, 568 U.S. 6, 133 S. Ct. 12, 184 L. Ed. 2d 317 (2012).
- ⁷ *Barnett v. U.S.*, 397 F. Supp. 631 (D.S.C. 1975).
- ⁸ *Weisberg v. U.S. Dept. of Justice*, 745 F.2d 1476 (D.C. Cir. 1984).
- ⁹ *U.S. v. Drinkwater*, 434 F. Supp. 457 (E.D. Va. 1977).
- ¹⁰ *U.S. v. Drinkwater*, 434 F. Supp. 457 (E.D. Va. 1977).

End of Document

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35A Am. Jur. 2d Federal Tort Claims Act § 19

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II. Right to Proceed Under Act

C. Effect of Other Provisions for Relief on Right to Proceed Under the Act

§ 19. Death on The High Seas Act preclusion of recovery under FTCA

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [United States](#)  872, 964(1), 964(2)

A.L.R. Library

[Liability of United States, Under Federal Tort Claims Act \(28 U.S.C.A. ss1346\(b\), 2671 et seq\) or Suits in Admiralty Act \(46 App. U.S.C.A. ss741 et seq\), for Injuries or Damages Arising from Issuance, Preparation, or Distribution of Charts, Maps, or Like Navigational Aids, 164 A.L.R. Fed. 541](#)

The Death on The High Seas Act¹ authorizes recovery, by an action in admiralty, for a death caused by a wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any state, or the District of Columbia, or the territories or dependencies of the United States. The recovery is for the exclusive benefit of the decedent's spouse, parent, child, or dependent relative against the person or vessel responsible.² The statute has been held to supersede state wrongful death statutes to the extent that it is applicable.³ Moreover, a suit under the Death on the High Seas Act against the United States mandates the pleading of the Suits in Admiralty Act,⁴ and not the Federal Tort Claims Act (FTCA), as the basis for a waiver of sovereign immunity.⁵ Thus, in an action for wrongful death, arising out of an aircraft crash in the Pacific Ocean, the Death on the High Seas Act, rather than the FTCA, has been deemed the proper statute under which to bring the action.⁶

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Footnotes

¹ [46 U.S.C.A. §§ 30301 to 30308.](#)

² [46 U.S.C.A. § 30302.](#)

As to admiralty suits against the United States, generally, see [Am. Jur. 2d, Admiralty §§ 96 to 100](#).

³ [Batkiewicz v. Seas Shipping Co.](#), 53 F. Supp. 802 (S.D. N.Y. 1943).

⁴ [46 U.S.C.A. §§ 30901 to 30918](#).

⁵ [Williams v. U.S.](#), 711 F.2d 893, 37 Fed. R. Serv. 2d 284 (9th Cir. 1983).

⁶ [Stoddard v. Ling-Temco-Vought, Inc.](#), 513 F. Supp. 314 (C.D. Cal. 1980).

End of Document

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35A Am. Jur. 2d Federal Tort Claims Act § 20

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II. Right to Proceed Under Act

C. Effect of Other Provisions for Relief on Right to Proceed Under the Act

§ 20. Acts for benefit of veterans precluding recovery under FTCA

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [United States](#)  872, 964(1), 964(2)

Forms

[Am. Jur. Pleading and Practice Forms, Federal Tort Claims Act §§ 9 to 13.40, 14, 18](#) (Complaint—Personal injury—Medical malpractice claims)

[Federal Procedural Forms §§ 63:70 to 63:78](#) (Complaint—Personal injury—Medical malpractice claims)

Benefits under the Veteran's Benefits Act¹ in the nature of medical expenses and disability payments are available to members of the Armed Forces whether or not they are injured in the course of military service. The Veteran's Benefits Act does not include a provision stating that such payments are the exclusive remedy of a member of the Armed Forces, and it has long been held that a member of the Armed Forces who is injured other than in the course of military service may maintain a Federal Tort Claims Act (FTCA) suit against the government.² Also, the fact that a plaintiff received benefits under the Veterans' Benefits Act or various predecessor statutes does not preclude the plaintiff from suing under the FTCA if the injury did not occur incident to active military service.³ Thus, a survivor's action under the FTCA for the wrongful death of an off-duty service member on furlough who was killed on a roadway within a military reservation while proceeding to an off-base home is not barred by the survivor's receipt of veteran's benefits.⁴

Observation:

The military compensation scheme in the Veterans' Benefits Act provides an upper limit of liability for the government as to service-connected injuries, and the FTCA does not permit circumvention of that limitation by allowing a defendant to seek indemnity from the United States with respect to the claim of a service member.⁵

The remedy afforded by the FTCA provisions for administrative adjustment of claims,⁶ and judicial action⁷ for damages for personal injury, including death, arising from malpractice or negligence of a physician, dentist, podiatrist, chiropractor, optometrist, nurse, physician assistant, expanded-function dental auxiliary, pharmacist or paramedical, or other supporting personnel in furnishing health care or treatment in the exercise of duties in and for the Veterans' Health Administration Department of Medicine and Surgery, is made exclusive, by statute, of any other civil action or proceeding by reason of the same subject matter against the health care employee (or employee's estate) whose act or omission gave rise to the claim.⁸ Under this provision, the FTCA constitutes the exclusive avenue for claims of medical malpractice or negligence involving VA personnel.⁹ At the same time though, where the FTCA's intentional tort exclusion bars a claim for damages based on an unauthorized performance of surgery, but the operation of the exclusion is nullified in the context of tort claims arising out of the conduct of the VA medical personnel within the scope of that provision, the FTCA may be applied to the tort claims.¹⁰

Observation:

The Veterans' Judicial Review Act (VJRA) does not deprive the district court of subject-matter jurisdiction to adjudicate a pro se veteran's FTCA claims against the Department of Veterans Affairs (VA), in which the claimant alleged intentional infliction of emotional distress, arising from the covering up by the VA of the presence of a schizophrenia diagnosis with slight social and industrial disability, negligent failure to inform the veteran of the diagnosis, and medical malpractice, arising from the VA's failure to communicate the risks and choices available to the veteran; the veteran's claims did not raise a question of law or fact "necessary to a decision by the Secretary under a law that affects the provision of benefits" which the court was barred from reviewing under the VJRA.¹¹ Likewise, the VJRA does not provide adequate remedy for a disabled veteran's claim for collateral damages caused by a VA psychiatrist's negligence in improperly reducing the disabled veteran's disability rating, and thus the claim would fall within the Administrative Procedure Act's and FTCA waivers of sovereign immunity, where the veteran had already made use of the VJRA's appeal process and won an award of retroactive benefits, the veteran had exhausted administrative remedies, and the Board of Veteran Affairs (BVA) did not rule on the issue of collateral damages.¹²

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Footnotes

- ¹ 38 U.S.C.A. §§ 301 to 323.
- ² *Brooks v. U.S.*, 337 U.S. 49, 69 S. Ct. 918, 93 L. Ed. 1200 (1949).
- ³ *U.S. v. Brown*, 348 U.S. 110, 75 S. Ct. 141, 99 L. Ed. 139 (1954).
As to service-connected claims, see § 3.
- ⁴ *Parker v. U.S.*, 611 F.2d 1007 (5th Cir. 1980).
- ⁵ *Stencel Aero Engineering Corp. v. U. S.*, 431 U.S. 666, 97 S. Ct. 2054, 52 L. Ed. 2d 665 (1977).
- ⁶ 28 U.S.C.A. § 2672.
- ⁷ 28 U.S.C.A. § 1346(b).
- ⁸ 38 U.S.C.A. § 7316.
- ⁹ *Molzof v. U.S.*, 502 U.S. 301, 112 S. Ct. 711, 116 L. Ed. 2d 731 (1992).
- ¹⁰ *Franklin v. U.S.*, 992 F.2d 1492 (10th Cir. 1993).

¹¹ [Thomas v. Principi](#), 394 F.3d 970 (D.C. Cir. 2005).

¹² [Cortes Castillo v. Veterans Admin.](#), 433 F. Supp. 2d 221 (D.P.R. 2006).

End of Document

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35A Am. Jur. 2d Federal Tort Claims Act § 21

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II. Right to Proceed Under Act

C. Effect of Other Provisions for Relief on Right to Proceed Under the Act

§ 21. Civil Service Reform Act preclusion of recovery under FTCA

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [United States](#)  872, 964(1), 964(2)

The exclusive remedy provisions of the Civil Service Reform Act (CSRA) for covered employees who have suffered from alleged adverse personnel actions¹ bar mental anguish² and other tort claims under the Federal Tort Claims Act (FTCA).³ The CSRA also preempts suits for constitutional violations arising from governmental personnel actions.⁴

This scheme for review of adverse employment decisions is the type of narrowly tailored employee compensation scheme that preempts the more general tort recovery statutes, such as the FTCA.⁵ It may be neither supplemented nor replaced by other remedies.⁶ Thus, a federal employee's action under the FTCA against an employer, the Strategic National Stockpile, a subset of the Centers for Disease Control and Prevention (CDC), were precluded by the Civil Service Reform Act (CSRA), where the employee's claims that the employer sabotaged the employee's ability to accomplish assigned job duties and objectives, required the employee to perform work outside the employee's job description, and blamed the employee for mistakes by others all stemmed from the employee's employment relationship with the employer and all concerned the employer's personnel practices and policies.⁷ On the other hand, the CSRA would not preempt a Forest Service employee's claim under the FTCA alleging the negligent supervision of a superior who allegedly raped an employee, where the superior's alleged conduct did not involve personnel actions within the meaning of the CSRA and was not perpetrated with respect to the superior's authority.⁸

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Footnotes

¹ 5 U.S.C.A. §§ 7501 to 7504; 5 U.S.C.A. §§ 7701 to 7703.

² *Gergick v. Austin*, 997 F.2d 1237 (8th Cir. 1993).

³ *Bartlett v. U.S.*, 835 F. Supp. 1246 (E.D. Wash. 1993).

⁴ Fuller v. Johnson, 107 F. Supp. 3d 1161 (W.D. Wash. 2015), *aff'd*, 709 Fed. Appx. 847 (9th Cir. 2017).

⁵ American Postal Workers Union, AFL-CIO v. U.S. Postal Service, 940 F.2d 704 (D.C. Cir. 1991).

⁶ Gergick v. Austin, 997 F.2d 1237 (8th Cir. 1993).

⁷ Tubesing v. U.S., 810 F.3d 330 (5th Cir. 2016).

⁸ Brock v. U.S., 64 F.3d 1421 (9th Cir. 1995).

End of Document

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35A Am. Jur. 2d Federal Tort Claims Act § 22

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II. Right to Proceed Under Act

C. Effect of Other Provisions for Relief on Right to Proceed Under the Act

§ 22. Whistleblower Protection Act preclusion of recovery under FTCA

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [United States](#)  872, 964(1), 964(2)

The Whistleblower Protection Act¹ does not authorize government employees to bring claims under the Federal Tort Claims Act (FTCA) based on conduct for which redress is available under the Civil Service Reform Act.²

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Footnotes

¹ [5 U.S.C.A. § 1221](#).

² [Gergick v. Austin, 997 F.2d 1237 \(8th Cir. 1993\)](#).

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35A Am. Jur. 2d Federal Tort Claims Act § 23

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Federal Tort Claims Act

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II. Right to Proceed Under Act

C. Effect of Other Provisions for Relief on Right to Proceed Under the Act

§ 23. Title VII of the Civil Rights Act of 1964 preclusion of recovery under FTCA

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [United States](#)  872, 964(1), 964(2)

Title VII of the Civil Rights Act of 1964¹ provides the exclusive judicial remedy for claims of discrimination in federal employment.² Accordingly, a plaintiff cannot pursue Federal Tort Claims Act (FTCA) damages for emotional distress as a supplement to a retaliation claim under Title VII, even though damages for emotional distress are not available under Title VII.³ Also, Title VII would bar a Forest Service employee's action under the FTCA for negligent supervision, arising out of alleged retaliation by coworkers following the employee's filing of a complaint with the Equal Employment Opportunity Commission alleging rape by a superior; the coworkers' alleged conduct was nothing more than an employment discrimination claim.⁴

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Footnotes

¹ 42 U.S.C.A. §§ 2000e to 2000e-4.

² [Brown v. General Services Administration](#), 425 U.S. 820, 96 S. Ct. 1961, 48 L. Ed. 2d 402 (1976).

³ [Gergick v. Austin](#), 997 F.2d 1237 (8th Cir. 1993).

⁴ [Brock v. U.S.](#), 64 F.3d 1421 (9th Cir. 1995).

35A Am. Jur. 2d Federal Tort Claims Act § 24

American Jurisprudence, Second Edition | May 2021 Update

Federal Tort Claims Act

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II. Right to Proceed Under Act

C. Effect of Other Provisions for Relief on Right to Proceed Under the Act

§ 24. Social Security Act preclusion of recovery under FTCA

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [United States](#)  872, 964(1), 964(2)

The Social Security Act¹ provides an exclusive remedy for issues arising under that Act.² Accordingly, a survivor's Federal Tort Claims Act (FTCA) suit against the United States, arising out of an alleged wrongful termination of the decedent's social security benefits which allegedly caused the decedent's death, would be barred.³

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Footnotes

¹ 42 U.S.C.A. § 405.

² Hooker v. U.S. Dept. of Health and Human Services, 858 F.2d 525 (9th Cir. 1988).

³ Jarrett v. U.S., 874 F.2d 201 (4th Cir. 1989).

End of Document

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35A Am. Jur. 2d Federal Tort Claims Act § 25

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II. Right to Proceed Under Act

C. Effect of Other Provisions for Relief on Right to Proceed Under the Act

§ 25. Atomic Energy Act precluding recovery under Federal Tort Claims Act (FTCA)

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [United States](#)  872, 964(1), 964(2)

The judicial review and enforcement provisions of the Atomic Energy Act¹ preclude private judicial enforcement of the Federal Tort Claims Act (FTCA).² Thus, an action cannot be maintained under the FTCA.³

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Footnotes

¹ 42 U.S.C.A. §§ 2231 to 2243, 2271 to 2284.

² *Liesen v. Louisiana Power & Light Co.*, 636 F.2d 94 (5th Cir. 1981).

³ *Simmons v. Arkansas Power & Light Co.*, 655 F.2d 131 (8th Cir. 1981).

35A Am. Jur. 2d Federal Tort Claims Act § 26

American Jurisprudence, Second Edition | May 2021 Update

Federal Tort Claims Act

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II. Right to Proceed Under Act

C. Effect of Other Provisions for Relief on Right to Proceed Under the Act

§ 26. Postal Reorganization Act preclusion of recovery under FTCA

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [United States](#)  872, 964(1), 964(2)

A nonpreference eligible postal worker cannot sue for employment-related torts under the Federal Tort Claims Act (FTCA). The relevant provisions of the Postal Reorganization Act (PRA)¹ and the Civil Service Reform Act² constitute a comprehensive scheme governing employment relations.³ Accordingly, a postal employee's FTCA claim against the Postmaster General and a local postmaster has been held preempted by the PRA.⁴

The provision of the PRA making the FTCA provisions relating to tort claims applicable to tort claims arising out of activities of the United States Postal Service restricts the PRA's general waiver of sovereign immunity only by requiring claimants to follow the FTCA procedures for those claims cognizable under the FTCA.⁵

Although the PRA contains a generalized waiver of immunity to suit, that statute explicitly acknowledges that the provisions of the FTCA will apply to all tort claims arising out of the Postal Service's activities.⁶

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Footnotes

¹ 39 U.S.C.A. §§ 1001 to 1011.

² 5 U.S.C.A. §§ 7501 to 7504.

³ Kennedy v. U.S. Postal Service, 145 F.3d 1077 (9th Cir. 1998).

⁴ Martin v. Runyon, 14 F. Supp. 2d 174 (D.P.R. 1998).

⁵ Global Mail Ltd. v. U.S. Postal Service, 142 F.3d 208 (4th Cir. 1998).

⁶ Fothergill v. U.S., 566 F.3d 248 (1st Cir. 2009).

End of Document

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35A Am. Jur. 2d Federal Tort Claims Act § 27

American Jurisprudence, Second Edition | May 2021 Update

Federal Tort Claims Act

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II. Right to Proceed Under Act

C. Effect of Other Provisions for Relief on Right to Proceed Under the Act

§ 27. Public Health Service Act preclusion of recovery under FTCA

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [United States](#)  872, 964(1), 964(2)

Under the Public Health Service Act (PHSA), the remedy against the United States provided by the Federal Tort Claims Act (FTCA), or by alternative benefits provided where the availability of such benefits precludes a remedy under the FTCA for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigation, by any commissioned officer or employee of the Public Health Service while acting within the scope of office or employment, will be exclusive of any other civil action or proceeding by reason of the same subject matter against the officer or employee (or such party's estate) whose act or omission gave rise to the claim.¹

The PHSA also provides protection from legal liability for certain health care professionals providing services pursuant to the Act.² The PHSA precludes Bivens³ actions against individual PHS officers or employees for harms arising out of the performance of medical or related functions within the scope of their employment, barring all actions against them for such conduct and, by its terms, limiting recovery for such conduct to suits against the United States.⁴

The PHSA establishes that the provision of the FTCA⁵ will not apply to an assault or battery arising out of negligence in the performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigations.⁶ Accordingly, the United States had to be substituted as the defendant in a patient's action for alleged dental malpractice and failure to obtain informed consent, for the health center which received funding from the United States pursuant to the Public Health Services Act, who was eligible for malpractice coverage under the FTCA prior to the patient's treatment, and was certified to be an employee of the federal government for purposes of the Public Health Services Act, such that an action against the United States was the patient's exclusive remedy.⁷ However, tort suits against a private enterprise which receives grant money from the U.S. Public Health Service or its employees can be maintained only under the FTCA.⁸

Volunteer physicians who provided services at a free nonprofit clinic were deemed employees of the federal government under the PHSA only for purposes of bringing civil actions against them within coverage of FTCA, and did not receive compensation for their work from the government, and therefore the physicians' deemed employee status did not render unavailable to the United States, in an action under the FTCA for medical malpractice and wrongful death arising from

treatment provided by the physicians, the immunity conferred upon nonprofit entities organized for charitable purpose and their volunteers pursuant to the New Jersey Charitable Immunity Act (NJCIA).⁹

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Footnotes

- ¹ 42 U.S.C.A. § 233(a).
- ² 42 U.S.C.A. § 233(g) to (k).
- ³ *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971).
- ⁴ *Hui v. Castaneda*, 559 U.S. 799, 130 S. Ct. 1845, 176 L. Ed. 2d 703 (2010).
- ⁵ 28 U.S.C.A. § 2680(h).
- ⁶ 42 U.S.C.A. § 233(e).
- ⁷ *Nin v. Liao*, 2003 WL 21018816 (S.D. N.Y. 2003).
- ⁸ *Arteaga v. U.S.*, 711 F.3d 828 (7th Cir. 2013).
- ⁹ *Lomando v. U.S.*, 667 F.3d 363, 80 A.L.R. Fed. 2d 699 (3d Cir. 2011).

End of Document

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35A Am. Jur. 2d Federal Tort Claims Act § 28

American Jurisprudence, Second Edition | May 2021 Update

Federal Tort Claims Act

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II. Right to Proceed Under Act

C. Effect of Other Provisions for Relief on Right to Proceed Under the Act

§ 28. Miller Act preclusion of recovery under FTCA

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [United States](#)  872, 964(1), 964(2)

Trial Strategy

[Litigation of Claim Under Miller Act, 40 U.S.C.A. §§ 3131 et seq., 148 Am. Jur. Trials 1](#)

In an action arising out of the allegedly negligent failure of a government prime contractor to require the posting of a payment bond called for by the Miller Act,¹ a court would deny a right to recover under the Federal Tort Claims Act (FTCA) where the claim asserted against the government is not one that could have been asserted against a private person under the laws of the state in which the alleged wrong occurred, and the claimed negligence constituted no more than a failure on the part of the federal government to carry out a statutory duty in the conduct of its own affairs.² Similarly, a subcontractor on a government construction project cannot recover against the government under the FTCA for the government's alleged negligence in investigating the financial worth of individual sureties who posted payment and performance bonds for a general contractor, as required by the Miller Act, since there is no analogous private right of action for failing to investigate a surety on a Miller Act bond, and thus the government cannot be positioned "as a private individual under like circumstances," as required by the FTCA.³

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Footnotes

¹ [40 U.S.C.A. §§ 3131 to 3134.](#)

² [U.S. v. Smith, 324 F.2d 622 \(5th Cir. 1963\).](#)

³ [Hardaway Co. v. U.S. Army Corps of Engineers, 980 F.2d 1415 \(11th Cir. 1993\).](#)

End of Document

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35A Am. Jur. 2d Federal Tort Claims Act § 29

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Federal Tort Claims Act

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II. Right to Proceed Under Act

C. Effect of Other Provisions for Relief on Right to Proceed Under the Act

§ 29. Flood Control Act preclusion of recovery under FTCA

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [United States](#)  872, 964(1), 964(2)

The Flood Control Act of 1970¹ provides that no liability of any kind can attach to or rest upon the United States for any damage from or by floods or flood waters at any place, despite the fact that the project is not exclusively devoted to flood control.² The immunity provided the United States by this Act is sweeping and unambiguous, barring recovery even by recreational users of reservoirs injured during flood control operations.³

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Footnotes

¹ [33 U.S.C.A. § 702c](#).

² [Aetna Ins. Co. v. U.S.](#), 628 F.2d 1201 (9th Cir. 1980).

³ [U.S. v. James](#), 478 U.S. 597, 106 S. Ct. 3116, 92 L. Ed. 2d 483 (1986) (abrogated on other grounds by, [Central Green Co. v. U.S.](#), 531 U.S. 425, 121 S. Ct. 1005, 148 L. Ed. 2d 919 (2001)).

35A Am. Jur. 2d Federal Tort Claims Act § 30

American Jurisprudence, Second Edition | May 2021 Update

Federal Tort Claims Act

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II. Right to Proceed Under Act

C. Effect of Other Provisions for Relief on Right to Proceed Under the Act

§ 30. Act governing federal prisoner's work-related claims precluding recovery under FTCA

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [United States](#)  872, 964(1), 964(2)

Congress has authorized the maintenance of a Prison Industries Fund which would compensate prisoners injured in connection with work in federal prison industries, or in operating or maintaining prisons,¹ and such prisoners cannot maintain an action under the Federal Tort Claims Act (FTCA) against the government for such injuries.² Accordingly, a federal prisoner's action under the FTCA, alleging that prison officials were negligent in delaying treatment for the prisoner's preexisting knee injury, which was reinjured or aggravated while the federal prisoner was working in the prison, has been barred, since the Prison Industries Fund provided the exclusive remedy for exacerbation of the prisoner's knee injury by the officials' negligence.³

Federal prisoners also cannot maintain actions under the FTCA for injuries arising out of malpractice by doctors employed by the government in treating injuries incurred while working in prison industries.⁴

The Inmate Accident Compensation Act has been held to be the exclusive remedy against the government for a prisoner with alleged work-related injuries, and thus the dismissal of a prisoner's claims under the FTCA would be warranted.⁵

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Footnotes

¹ 18 U.S.C.A. § 4126(c)(4).

² *Vander v. U.S. Dept. of Justice*, 268 F.3d 661 (9th Cir. 2001).

³ *Vander v. U.S. Dept. of Justice*, 268 F.3d 661 (9th Cir. 2001).

⁴ *Saladino v. Federal Prison Industries*, 404 F. Supp. 1054 (D. Conn. 1975).

⁵ *Smith v. U.S.*, 561 F.3d 1090 (10th Cir. 2009).

End of Document

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35A Am. Jur. 2d Federal Tort Claims Act § 31

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II. Right to Proceed Under Act

C. Effect of Other Provisions for Relief on Right to Proceed Under the Act

§ 31. Other legislation precluding recovery under FTCA

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [United States](#)  872, 964(1), 964(2)

Among the statutes relating to the National Aeronautics and Space Administration is one that authorizes the Administration to consider, ascertain, adjust, determine, settle, and pay, on behalf of the United States, in full satisfaction thereof, any claim for \$25,000 or less against the United States for bodily injury, death, or damage to or loss of real or personal property resulting from the conduct of the Administration's functions, where such claim is presented to the Administration in writing within two years after the accident or incident out of which the claim arises, and if the Administration considers that a claim in excess of that amount is meritorious and would otherwise be covered by this provision, to report the facts and circumstances thereof to the Congress for its consideration.¹

Sovereign immunity is not waived for injuries related to terrorist incidents under the Anti-Terrorism Act.²

The National Guard Claims Act also authorizes the administrative settlement in an amount not more than \$100,000 of claims against the United States.³ Payment may not be made under this provision for reimbursement for medical, hospital or burial services furnished at the expense of the United States or of any state, or the District of Columbia or Puerto Rico.⁴

Where a "disputes" clause in a government contract necessarily includes claims that might possibly have their basis in tort, as well as claims for breach of contract, and this clause is subject to the provisions of the former Wunderlich Act, making, with certain exceptions, the United States contracting officer's determinations regarding a dispute final,⁵ the person contracting with the government has been held not entitled to withdraw the claim and thereafter maintain an action thereon under the Federal Tort Claims Act (FTCA).⁶

The Attorney General may settle for not more than \$50,000 in any one case, a claim for personal injury, death, or damage to or loss of, privately owned property caused by an investigative or law enforcement officer of the United States.⁷ The Attorney General may also settle and pay not more than \$1,000 in any one case for a claim made by an officer or employee at a federal penal or correctional institutions for damage to, or loss of, personal property incident to employment.⁸

The District Disability Act for the District of Columbia authorizing benefits for police officers and firefighters for injuries

contracted in the performance of their duties has been held not to preclude the maintenance of an action under the FTCA.⁹

The FTCA is not to be used for the litigation of issues concerning the legality of seizures and forfeitures made under certain internal revenue laws, in situations in which the revenue laws provide a means, of which the claimant failed to utilize, to contest the forfeiture.¹⁰

The North Atlantic Treaty Organization Status of Forces Agreement, governs, among other things, the liability of the United States for injuries inflicted by members of foreign military forces in the United States.¹¹ As a prerequisite to liability of the United States for the tort of a representative of a NATO signatory under the FTCA, and pursuant to treaty agreements governing the rights of a member of a “force,” it must appear that the tortfeasor was a member of a “force,” and that the tortfeasor committed the tort in the performance of official duty.¹²

The Federally Supported Health Centers Assistance Act (FSHCAA) makes the FTCA the exclusive remedy for specified actions against members of the Public Health Service, and protects employees of the Public Health Service from being subject to suit while performing medical and similar functions by requiring that such suits be brought against the United States instead.¹³

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Footnotes

¹ 51 U.S.C.A. § 20113(m).

² *Joiner v. United States*, 955 F.3d 399 (5th Cir. 2020).

³ 32 U.S.C.A. § 715.

⁴ 32 U.S.C.A. § 715(c).

⁵ Former 41 U.S.C.A. §§ 321, 322.

⁶ *U. S. v. Peter Kiewit Sons’ Co.*, 345 F.2d 879 (8th Cir. 1965).

⁷ 31 U.S.C.A. § 3724, which also provides that a claim may be paid only if the claimant accepts the amount of the settlement in complete satisfaction of the claim against the government.

⁸ 31 U.S.C.A. § 3722(a).

⁹ *Bradshaw v. U.S.*, 443 F.2d 759 (D.C. Cir. 1971).

¹⁰ *De Bonis v. U.S.*, 103 F. Supp. 119 (W.D. Pa. 1952).

¹¹ North Atlantic Treaty, Art. 2846, Aug. 23, 1953, 4 U.S.T. 1792 (1953 WL 44517).

¹² *Robertson v. U.S.*, 294 F.2d 920 (D.C. Cir. 1961).

¹³ *Celestine v. Mount Vernon Neighborhood Health Center*, 289 F. Supp. 2d 392 (S.D. N.Y. 2003), *aff’d*, 403 F.3d 76 (2d Cir. 2005), referring to 42 U.S.C.A. § 233(g).